

UNITED STATES DISTRICT COURT

Western District of North Carolina

UNITED STATES OF AMERICA

V.

Tap Root Dairy, LLC

) **JUDGMENT IN A CRIMINAL CASE**

) (For Offenses Committed On or After November 1, 1987)

)

)

) Case Number: 1:13-mj-00061-DLH-1

) USM Number:

)

) Peter Crane Anderson

) Defendant's Attorney

THE DEFENDANT:

- ☒ Pled guilty to count(s) 1.
- ☐ Pled nolo contendere to count(s) which was accepted by the court.
- ☐ Was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section	Nature of Offense	Date Offense Concluded	Counts
33 U.S.C. §§ 1311(a) and 1319(c)(1)(A), and 18 U.S.C. § 2	Violation of the Federal Water Pollution Control Act ("Clean Water Act"), Aid and Abet	12/04/12	1

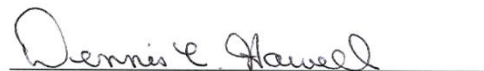
The Defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- ☐ The defendant has been found not guilty on count(s).
- ☐ Count(s) (is) (are) dismissed on the motion of the United States.

IT IS ORDERED that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 4/30/2015

Signed: May 6, 2015



Dennis L. Howell
United States Magistrate Judge



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PROBATION

The defendant shall be on probation for a term of 4 years.

At the expiration of the second year of probation, the Government agrees in good faith to consider any application by the defendant for early termination of probation, provided that the defendant has paid all fines and penalties, and the United States Probation Office for the Western District of North Carolina concurs that.

The Defendant has fully implemented the environmental compliance plan, and the United States Environmental Protection Agency concurs in that assessment, which concurrence shall not be unreasonably withheld;

The Defendant has fully satisfied all other terms of the plea agreement and any sentence imposed by the Court, including but not limited to the full payment of the criminal fine and community service payments; and

No other violations of the laws of the United States and/or the terms of the Defendant's probation have occurred.

☐ The condition for mandatory drug testing is suspended based on the court's "determination that the defendant poses a low risk of future substance abuse."

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release on a schedule to be established by the Court.
3. The defendant shall provide access to any personal or business financial information as requested by the probation officer.
4. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
5. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
6. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
7. The defendant shall submit his person, residence, office, vehicle and/or any computer system including computer data storage media, or any electronic device capable of storing, retrieving, and/or accessing data to which they have access or control, to a search, from time to time, conducted by any U.S. Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn other residents or occupants that such premises or vehicle may be subject to searches pursuant to this condition.
8. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed by the probation officer.
9. The defendant shall notify the probation officer within 72 hours of defendant's being arrested or questioned by a law enforcement officer.
10. If the instant offense was committed on or after 4/24/96, the defendant shall notify the probation officer of any material changes in defendant's economic circumstances which may affect the defendant's ability to pay any monetary penalty.

ADDITIONAL CONDITIONS:

11. Throughout the period of supervision the probation officer shall monitor the defendant's economic circumstances and shall report to the court, with recommendations as warranted, any material changes that affect the defendant's ability to pay any court-ordered penalties.
12. During the probation period, the defendant will permit the U.S. Environmental Protection Agency; the North Carolina State Bureau of Investigation, Diversion and Environmental Crimes Unit; the North Carolina Department of Environment and Natural Resources; or any other regulatory agency, to inspect the defendant's books and records and any of its physical facilities and equipment without notice and without a warrant or further permission of the defendant or its employees, officers, or agents.
13. During the probation period, the defendant has an independent duty to report immediately to the Court, through the U.S. Probation Office, any violation, or possible violation, of this agreement, any orders of the Court, or any environmental law, regulation, ordinance, or other environmental requirement.
14. The defendant shall design and implement a comprehensive environmental compliance program consistent with sentencing policies set forth in USSG §8D1.4. Such program shall be subject to the approval of the U.S. Environmental Protection Agency.
15. The Defendant shall publish a public apology letter in the form of a full page advertisement (or size designated by the United States) in no less than two major newspapers / publications, including one in the Asheville Citizen-Times, and one in the Charlotte Observer (or as otherwise designated by the United States) within five days following entry of the plea agreement. A copy of the advertisements shall be provided to the USAO-WDNC within a week of publication. This condition has been completed.

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$125.00	\$80,000.00	\$0.00

☐ The determination of restitution is deferred until. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

FINE

Pursuant to U.S.S.G. § 8B1.3, and in furtherance of the sentencing principles provided for under 18 U.S.C. § 3553(a), the Defendant shall pay the fine as a Community Service payment of \$80,000 for the explicit goal of funding environmental projects and initiatives designed for the benefit, preservation, and restoration of the waters of the United States in the Western District of North Carolina. The designated projects and initiatives shall be set forth in a recommendation from the United States Department of Justice, such as \$40,000 to the Southern Environmental Enforcement Network ("SEEN"), an alliance of regulatory and law enforcement agencies; and \$40,000 to the French Broad Riverkeeper, a charitable and nonprofit entity.

Southern Environmental Enforcement Network
5330 Stadium Trace Parkway
Suite 240
Birmingham, AL 35244
Attn: Geary Allen, Executive Director

MountainTrue
29 N Market St.,
Suite 610
Asheville, NC 28801
Attn: French Broad Riverkeeper

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ The interest requirement is waived.

☐ The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

☐ The defendant shall pay court appointed counsel fees.

☐ The defendant shall pay \$0.00 towards court appointed fees.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☐ Lump sum payment of \$0.00 due immediately, balance due
 ☐ Not later than _____
 ☐ In accordance ☐ (C), ☐ (D) below; or
- B ☒ Payment to begin immediately (may be combined with ☒ (C), ☐ (D) below); or
- C ☒ Payment in equal Monthly installments of \$1,740.00 to commence 30 days after the date of this judgment; or
- D ☐ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$ to commence 60 (E.g. 30 or 60) days after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court costs:
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, , except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: Tap Root Dairy, LLC
William Franklin Johnston
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STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/Designated Witness